SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2000

In *In re Kirby Produce Company, Inc.*, PACA Docket No. 98-0002, decided by the Judicial Officer on October 4, 1999 (13 pages), the Judicial Officer denied Respondent's Petition for Reconsideration. The Judicial Officer found that Respondent's November 12, 1998, motion to continue the hearing to enable Respondent to make full payment to its perishable agricultural commodities sellers prior to the hearing and convert the case from a "no-pay" to a "slow-pay" case, constitutes an admission that Respondent would not be able to make full payment in accordance with the PACA by the date of the hearing. The Judicial Officer also found that based on Respondent's November 12, 1998, admission, no issue of material fact exists regarding full payment to Respondent's perishable agricultural commodities sellers by the date of the hearing and no hearing is required.

In *In re Mary Meyers*, AWA Docket No. 96-0062, decided by the Judicial Officer on October 14, 1999 (11 pages), the Judicial Officer denied Respondent's Petition for Reconsideration because it was not timely filed. The Judicial Officer stated that even if Respondent's Petition for Reconsideration had been timely filed, it would be denied because Respondent had not raised a meritorious basis for finding that the Decision and Order, *In re Mary Meyers*, 56 Agric. Dec. 322 (1997), had been erroneously decided. The Judicial Officer stated that the Decision and Order had been properly issued based on Respondent's failure to file a timely answer. The Judicial Officer rejected Respondent's contention that the Decision and Order must be set aside because a United States Department of Agriculture employee stated to Respondent that the charges would be dropped and rejected Respondent's contention that the $26,000 civil penalty assessed against her must be vacated because neither Respondent nor Respondent's husband had the financial ability to pay the civil penalty.

In *In re Michael A. Huchital, Ph.D.*, AWA Docket No. 97-0020, decided by the Judicial Officer on November 4, 1999 (75 pages), the Judicial Officer affirmed the decision by Judge Hunt (ALJ) that Respondent failed to comply with the Standards of care for rabbits: that Respondent failed to provide interior building surfaces of indoor housing facilities that were substantially impervious to moisture and capable of being readily sanitized (9 C.F.R. § 3.51(d)); that Respondent failed to keep the premises (buildings and grounds) clean and in good repair to protect animals from injury and to facilitate prescribed husbandry practices (9 C.F.R. § 3.56(c)); that Respondent failed to sufficiently ventilate indoor housing facilities for rabbits to provide for the health and well-being of the rabbits and to minimize odors and ammonia levels (9 C.F.R. § 3.51(b)); that Respondent failed to sanitize primary enclosures for rabbits at least once every 30 days (9 C.F.R. § 3.56(b)(1)); and that Respondent failed to clean pans under primary enclosures for rabbits at least once each week (9 C.F.R. § 3.56(a)(3)). In addition, the Judicial Officer found that Respondent failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and to provide veterinary care to an animal in need of care (9 C.F.R. § 2.40) and that Respondent refused to permit Animal and Plant Health Inspection Service officials to document, by the taking of photographs, conditions of noncompliance in Respondent's facility (9 C.F.R. § 2.126(a)(5)). The Judicial Officer rejected

Complainant's contention that Respondent operated a *research facility*, as defined in the Animal Welfare Act (AWA) and the regulations issued under the AWA. The Judicial Officer assessed a $3,750 civil penalty against Respondent and ordered Respondent to cease and desist from violations of the AWA and the regulations and standards issued under the AWA.

In consolidated proceeding *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), PACA Docket Nos. D-94-0508 and D-94-0526, decided by the Judicial Officer on November 29, 1999 (78 pages), the Judicial Officer found that JSG Trading Corp. (Respondent) violated section 2(4) of the PACA. On March 2, 1998, the Judicial Officer issued a decision in which he applied a *per se* test to determine whether Respondent engaged in commercial bribery when it made payments to two purchasing agents who, at the time of the payments, were buying tomatoes from Respondent on behalf of their respective principals. The Judicial Officer concluded that, since Respondent's payments to the purchasing agents were more than *de minimis*, Respondent had engaged in commercial bribery, in violation of section 2(4) of the PACA. *In re JSG Trading Corp.* (Decision as to JSG Trading Corp., Gloria and Tony Enterprises, d/b/a G&T Enterprises, and Anthony Gentile), 57 Agric. Dec. 640 (1998), *remanded*, 176 F.3d 536 (D.C. Cir. 1999). Respondent filed a petition for judicial review. The United States Court of Appeals for the District of Columbia Circuit granted Respondent's petition for review and remanded the case to the Judicial Officer, instructing the Judicial Officer either to explain the justification for using a *per se* test to determine whether Respondent violated section 2(4) of the PACA or to abandon the *per se* test and apply traditional definitions of commercial bribery to determine whether Respondent violated section 2(4) of the PACA. *JSG Trading Corp. v. United States Dep't of Agric.*, 176 F.3d 536 (D.C. Cir. 1999). On remand, the Judicial Officer abandoned the *per se* test, found that Respondent had engaged in activities that fell within the traditional definitions of commercial bribery, as described in *JSG Trading Corp. v. United States Dep't of Agric., supra*, and revoked Respondent's PACA license. Specifically, the Judicial Officer found that the record contained substantial evidence that: (1) Respondent made payments to Mr. Gentile, a purchasing agent for L&P, one of Respondent's produce customers, and Mr. Lomoriello, a purchasing agent for American Banana, one of Respondent's produce customers; (2) the value of Respondent's payments to Mr. Gentile was more than *de minimis* and the value of Respondent's payments to Mr. Lomoriello was more than *de minimis*; (3) Respondent made at least some of the payments to Mr. Gentile to induce Mr. Gentile to purchase produce from Respondent and Respondent made payments to Mr. Lomoriello to induce Mr. Lomoriello to purchase produce from Respondent; and (4) the principals at L&P were not fully aware of all of the payments made by Respondent to Mr. Gentile and the principals at American Banana were not fully aware of the payments made by Respondent to Mr. Lomoriello. The Judicial Officer found that the evidence introduced by Complainant raised a rebuttable presumption that Respondent had violated section 2(4) of the PACA and that Respondent did not introduce evidence sufficient to rebut the presumption.

In *In re Midway Farms, Inc.*, 94 AMA Docket No. F&V 989-1, decided by the Judicial Officer on November 30, 1999 (4 pages), the Judicial Officer remanded the proceeding to Chief ALJ James W. Hunt for assignment to an administrative law judge for further proceedings in

accordance with the instructions in *Midway Farms v. United States Dep't of Agric.*, 188 F.3d 1136 (9th Cir. 1999).

In *In re Marysville Enterprises, Inc.* (Decision and Order as to Marysville Enterprises, Inc., and James L. Breeding), P.&S. Docket No. D-98-0027, decided by the Judicial Officer on January 4, 2000 (52 pages), the Judicial Officer concluded that Respondents willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) by purchasing livestock and failing to pay, when due, the full purchase price of the livestock and by issuing checks in purported payment of the purchase price of livestock, which checks were returned by the bank upon which the checks were drawn because there were not sufficient funds on deposit and available in the account to pay such checks when presented. The Judicial Officer suspended Respondents as registrants under the Packers and Stockyards Act for a period of 5 years and directed Respondents to cease and desist from: (a) failing to pay, when due, the full purchase price of livestock, (b) failing to pay the full purchase price of livestock, and (c) issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which the checks are drawn to pay checks when presented. The Judicial Officer held that Respondents' violations were willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) using either the standard for willfulness adopted by the United States Court of Appeals for the Tenth Circuit in *Capitol Packing Co. v. United States,* 350 F.2d 67 (10th Cir. 1965) or the standard for willfulness adopted by the United States Department of Agriculture. The Judicial Officer held that evidence that Respondents had violated provisions of the Packers and Stockyards Act and the Regulations that were not alleged in the Complaint, where the evidence was introduced merely for the purpose of proving that Respondents willfully violated the provisions of the Packers and Stockyards Act alleged in the Complaint, could be considered. The Judicial Officer also found that Respondent Breeding was the *alter ego* of Respondent Marysville. The Judicial Officer found a 5-year suspension of Respondents as registrants under the Packers and Stockyards Act was in accord with the United States Department of Agriculture's sanction policy, the sanction recommendation of the administrative officials charged with achieving the congressional purpose of the Packers and Stockyards Act, and the periods of suspension imposed in similar cases. The Judicial Officer rejected Respondents' contention that a suspension of Respondent Breeding as a registrant under the Packers and Stockyards Act was excessive and rejected Respondents' contention that Respondent Breeding's 40-year involvement in the livestock industry without a violation of the Packers and Stockyards Act, Respondents' reliance on a bank to pay livestock sellers, and Respondent Breeding's age were mitigating circumstances. Further, the Judicial Officer stated that he gave no weight to collateral effects of a suspension on a respondent. The Judicial Officer rejected Respondents' contention that they were denied due process because Respondents raised the issued for the first time on appeal. The Judicial Officer also stated that, contrary to Respondents' contention, proof that a respondent violated an act administered by the United States Department of Agriculture does not "guarantee" the conclusion that the respondent's violation was willful.

In *In re Saulsbury Enterprises* (Decision and Order on Remand), AMAA Docket No. 94-0002, decided by the Judicial Officer on February 14, 2000 (27 pages), the Judicial Officer concluded that a $205,000 civil penalty assessed against Respondents was not excessive within

the meaning of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution. The Judicial Officer had assessed a $219,000 civil penalty against Respondents in *In re Saulsbury Enterprises*, 55 Agric. Dec. 6 (1996), *aff'd in part, denied in part & remanded*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999). Respondents filed a Complaint for Review of the Decision and Order in the United States District Court for the Eastern District of California, which affirmed the Decision and Order, with the exception of $14,000 of the civil penalty. However, the Court concluded that the civil penalty provision in section 8c(14)(B) of the Agricultural Marketing Agreement Act (7 U.S.C. § 608c(14)(B)) was subject to the Excessive Fines Clause and remanded the proceeding to the Judicial Officer for further findings concerning whether the civil penalty assessed in the Decision and Order, as modified by the Court, was excessive within the meaning of the Excessive Fines Clause. The Judicial Officer found: (1) Respondents' 205 violations of the Raisin Order over almost a 5-year period were grave violations of the Raisin Order; (2) Respondents were highly culpable for the violations; (3) Respondents' violations harmed the Raisin Administrative Committee, handlers subject to the Raisin Order, the United States government, consumers of raisins produced from grapes grown in California, the Secretary of Agriculture's implementation of the policies expressly stated in the AMAA, and the integrity of the Raisin Order; (4) the civil penalty assessed against Respondents was authorized by the AMAA and was approximately 10 per centum of the maximum civil penalty that could have been assessed against Respondents; (5) the civil penalty assessed against Respondents was consistent with civil penalties assessed in similar cases; (6) Respondents had the ability to pay the assessed civil penalty; and (7) Respondents' financial condition may be significantly damaged by the payment of the civil penalty, but the civil penalty was not so disproportionate to Respondents' circumstances that there was no realistic expectation that Respondents would be able to pay the civil penalty.

In *In re PMD Produce Brokerage Corp.*, PACA Docket No. D-99-0004, decided by the Judicial Officer on February 18, 2000 (10 pages), the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer held that, pursuant to 7 C.F.R. § 1.142(c), Judge Bernstein's (ALJ) decision, issued orally at the close of the hearing, became effective 35 days after the decision was issued orally by the ALJ. The Judicial Officer concluded that he had no jurisdiction to consider Respondent's appeal petition, filed after the ALJ's decision became effective.

In *In re Anthony L. Thomas*, PACA-APP Docket No. 98-0001, decided by the Judicial Officer on February 22, 2000 (33 pages), the Judicial Officer affirmed Judge Baker's decision that Petitioner was responsibly connected with Sanford Produce Exchange, Inc., during the time that Sanford violated the PACA. The Judicial Officer found that Petitioner was a knowing "front man" who purchased produce; issued corporate checks; entered into contracts; leased office, warehouse, and cooler space; serviced produce sellers seeking payment; and collected monies from Sanford's customers. The Judicial Officer rejected Petitioner's contentions that he was an officer, director, and shareholder in name only and that he acted at the direction of Mr. Giuffrida, the real owner, who placed Petitioner out front to deal with customers who would have shunned Sanford, if aware of Mr. Giuffrida's involvement. The Judicial Officer found that Petitioner's deceit successfully induced produce sellers to sell to Sanford when they otherwise would not

have. The Judicial Officer concluded that Petitioner was actively involved in activities resulting in Sanford's failure to pay violations and therefore responsibly connected with Sanford, within the meaning of section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9) (Supp. III 1997)). The Judicial Officer also rejected Petitioner's argument that he meets both parts of the second prong of the "responsibly connected" test, in that Petitioner was only nominally an officer of Sanford and in that Petitioner was not an owner of a violating entity which was the alter ego of its owners.

In *In re Stew Leonard's*, 98 AMA Docket No. M 1-1, decided by the Judicial Officer on March 16, 2000 (63 pages), the Judicial Officer affirmed Judge Baker's decision dismissing Petitioner's petition instituted under 7 U.S.C. § 608c(15)(A). The Judicial Officer held that the Petitioner failed to prove that the Market Administrator's denial of Petitioner's request for producer-handler status under the New England Milk Marketing Order (7 C.F.R. pt. 1001) was not in accordance with law. The Judicial Officer stated that the burden of proof was on Petitioner; that because producer-handler status was an exception to the general regulatory framework of the Agricultural Marketing Agreement Act of 1937 and the New England Milk Marketing Order, it must be strictly construed; that the Market Administrator's determination regarding Petitioner's status must be given deference; and that the Market Administrator's determination regarding Petitioner's status was consistent with the purpose of the definition of "producer-handler" within the New England Milk Marketing Order (7 C.F.R. § 1001.10) and prior case law. The Judicial Officer rejected Petitioner's contentions that the Market Administrator's determination was arbitrary and capricious, conflicted with the goal of having an adequate supply of pure and wholesome milk, and violated Petitioner's right to equal protection of the law.

In *In re PMD Produce Brokerage Corp.*, PACA Docket No. D-99-0004, decided by the Judicial Officer on March 31, 2000 (24 pages), the Judicial Officer denied Respondent's Petition for Reconsideration because it was not timely filed (7 C.F.R. § 1.146(a)(3)). The Judicial Officer also stated that even if Respondent's Petition for Reconsideration had been timely filed, it would have been rejected because Respondent did not raise any meritorious basis for finding *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. ___ (Feb. 18, 2000) (Order Denying Late Appeal), erroneous. The Judicial Officer found that, under the Rules of Practice (7 C.F.R. § 1.142(c)), the date Judge Bernstein (ALJ) orally announced the decision at the close of the November 17, 1999, hearing, was the operative date for determining the timeliness of Respondent's appeal petition. The Judicial Officer rejected Respondent's contention that the operative date for determining the timeliness of Respondent's appeal petition was the date the Hearing Clerk furnished Respondent with a document entitled "Bench Decision." The Judicial Officer concluded that, under the Rules of Practice (7 C.F.R. § 1.142(c)), the document entitled "Bench Decision" was merely an excerpt from the portion of the transcript containing the orally-announced decision, and the date the Hearing Clerk furnished Respondent with the document entitled "Bench Decision" was not relevant to the determination of the time for filing Respondent's appeal petition.

In *In re Susan DeFrancesco*, AWA Docket No. 99-0036, decided by the Judicial Officer on May 1, 2000 (29 pages), the Judicial Officer affirmed the Default Decision by Administrative

Law Judge Edwin S. Bernstein (ALJ) assessing a $20,000 civil penalty against Respondents, suspending Respondents' Animal Welfare Act (Act) license for 70 days, and directing Respondents to cease and desist from violating the Act and the Regulations and Standards issued under the Act. Respondents' failure to file a timely answer is deemed an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)) and constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the Default Decision was properly issued. The Judicial Officer rejected Respondents' request to stay the ALJ's Default Decision. The ALJ's Default Decision did not become effective because Respondents filed a timely appeal to the Judicial Officer (7 C.F.R. § 1.139) and a stay of the ALJ's Default Decision would be a nullity. The Judicial Officer rejected Respondents' contention that they were denied due process because they did not receive the Complaint or the Motion for a Default Decision. The Judicial Officer stated that due process is satisfied if notice of a proceeding is sent in a manner reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Judicial Officer concluded that the Rules of Practice, which provides for service by ordinary mail to a respondent's last known principal place of business or last known residence after certified mail is returned marked by the postal service as "unclaimed" or "refused" (7 C.F.R. § 1.147(c)(1)), which procedure was followed in the proceeding, meets the requirements of due process. The Judicial Officer rejected Respondents' contention that their inability to travel to Washington, DC, denied them due process. The Judicial Officer stated that, while the Hearing Clerk is located in Washington, DC, the Rules of Practice do not require Respondents to personally deliver documents to the Hearing Clerk. Instead, 7 C.F.R. § 1.147(g) provides only that a document is deemed to be filed at the time the document reaches the Hearing Clerk and Respondents could have used the mail to effectuate filing. The Judicial Officer also stated the Administrative Procedure Act (5 U.S.C. § 554(b)) requires administrative law judges to give due regard to the convenience and necessity of the parties with respect to the location of a hearing and rejected Respondents' speculation that the ALJ would have responded to a request for a hearing by scheduling the hearing in Washington, DC. The Judicial Officer found there was no basis for Respondents' contention that their First Amendment rights were violated. The Judicial Officer rejected Respondents' offer of evidence regarding corrections, stating that, while corrections of violations of the Act are encouraged and can be taken into account when determining the sanction to be imposed, Respondents cannot for the first time on appeal offer evidence of corrections. Finally, the Judicial Officer did not reduce or set aside the civil penalty based on Respondents' allegation that they cannot afford to pay a $20,000 civil penalty. A respondent's ability to pay the civil penalty is not one of the factors that must be considered when determining the amount of the civil penalty to be assessed for violations of the Act (7 U.S.C. § 2149(b)).

In *In re Dwight L. Lane*, EAJA-FSA Docket No. 98-0002, decided by the Judicial Officer on May 17, 2000 (70 pages), the Judicial Officer reduced Hearing Officer Harry Iszler's awards to Equal Access to Justice Act (EAJA) Applicants from $213,997.77 to $55,396.60. The Judicial Officer found Respondent's answer was timely filed and met the requirements for an answer in 7 C.F.R. § 1.195(c). The Judicial Officer also held that, under the EAJA, an applicant may be awarded fees and other expenses incurred in connection with an adversary adjudication. However, the administrative process that precedes the agency decision, which is the basis for the

adversary adjudication, is not part of the adversary adjudication. The Judicial Officer rejected Applicants' contention that the current $125-per-hour rate cap for attorney fees in the EAJA could be awarded to Applicants. Instead, the Judicial Officer found that the $75-per-hour rate cap in the EAJA (5 U.S.C. § 504(b)(1)(A)(ii) (1994)), at the commencement of the adversary adjudications for which Applicants sought EAJA awards, was the applicable maximum rate at which attorney fees could be awarded to Applicants. The Judicial Officer also rejected Applicants' contention that the $75-per-hour rate cap must be increased to reflect the change in the cost of living that has occurred since enactment of the EAJA in 1980. The Judicial Officer found 5 U.S.C. § 504(b)(1)(A)(ii) (1994) explicitly provides that attorney fees may not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living justifies a higher fee, and the USDA has not issued a regulation increasing the cap on the rate at which attorney fees may be awarded. Based on the legislative history applicable to the EAJA (H.R. Rep. No. 96-1418), the Judicial Officer held that no award can be made for agent fees because the record did not establish that Applicants' agent was a non-attorney representative in the adversary adjudications for which Applicants sought EAJA awards. However, the Judicial Officer did award Applicants' for fees incurred for their agent's services as an expert witness at the rate provided in 28 U.S.C. § 1821(b).

In *In re Greenville Packing Co., Inc.*, FMIA Docket No. 98-0005 and PPIA Docket No. 98-0003, decided by the Judicial Officer on June 1, 2000, the Judicial Officer affirmed the Decision by Judge Baker (ALJ) indefinitely withdrawing inspection services under title I of the Federal Meat Inspection Act (FMIA) and under the Poultry Products Inspection Act (PPIA) from Respondent, based upon Respondent's conviction of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A). The Judicial Officer found that Respondent's bribery of a Food Safety and Inspection Service (FSIS) inspector to avoid required ante mortem and post mortem inspections at Respondent's establishment strikes at the heart of the FMIA and the PPIA. The Judicial Officer considered the mitigating circumstances offered by Respondent, but found that they were insufficient to overcome Respondent's unfitness to receive inspection services under the FMIA and under the PPIA, as demonstrated by Respondent's felony conviction. The Judicial Officer held that once Respondent introduced factors in mitigation of its bribery conviction, Complainant could introduce evidence of aggravating circumstances. The Judicial Officer rejected Respondent's contention that FSIS inspectors issued process deficiency records (PDRs) in order to build a record of aggravating circumstances. The Judicial Officer stated that there is a presumption of regularity with respect to official acts of public officers and in the absence of clear evidence that FSIS inspectors improperly issued PDRs, the FSIS inspectors are presumed to have properly discharged their official duties. The Judicial Officer rejected Respondent's contention that FSIS' Federal Register notice (44 Fed. Reg. 37,322-24 (1979)) setting forth the sanction FSIS will seek in administrative proceedings is a "per se" policy that has been rejected by the federal courts. The Judicial Officer held that, under the Department's sanction policy, sanction recommendations of administrative officials, while not controlling, are relevant and that the ALJ properly allowed an administrative official charged with the responsibility for achieving the congressional purposes of the FMIA and the PPIA to testify regarding his sanction recommendation.

In *In re David Tracy Bradshaw*, HPA Docket No. 99-0008, decided by the Judicial Officer on June 14, 2000, the Judicial Officer affirmed the decision by Chief Administrative Law Judge James W. Hunt: (1) concluding that Respondent allowed the entry of a horse in a horse show, for the purpose of showing or exhibiting the horse, while the horse was sore, in violation of 15 U.S.C. § 1824(2)(D); (2) assessing Respondent a $2,000 civil penalty; and (3) disqualifying Respondent for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or participating in any horse show, horse exhibition, horse sale, or horse auction. The Judicial Officer held that digital palpation alone is a reliable method by which to determine if a horse is "sore," as that word is defined in the Horse Protection Act. The Judicial Officer found *Young v. United States Dep't of Agric.*, 53 F.3d 728 (5th Cir. 1995), inapposite and rejected Respondent's contention that the Chief ALJ erred by failing to follow the holding in *Young*. The Judicial Officer held documents comprising past recollection recorded, prepared while the events were fresh in the authors' minds, are reliable, probative, and substantial evidence and the Chief ALJ did not err when he allowed the admission of these documents. The Judicial Officer held the Sixth Amendment right to confront witnesses is not applicable to administrative proceedings. Moreover, the Judicial Officer found that Complainant's counsel's objections to questions on cross-examination did not deprive Respondent of the right to confront witnesses against him. The Judicial Officer rejected Respondent's contention that the Chief ALJ erred by drawing an inference against Respondent based upon Respondent's failure to call as a witness the trainer of Respondent's horse.

In *In re Mangos Plus, Inc.*, PACA Docket No. D-98-0025, decided by the Judicial Officer on June 15, 2000, the Judicial Officer affirmed the decision by Chief Judge Hunt concluding that Respondent committed flagrant and repeated violations of the Perishable Agricultural Commodities Act, 1930 (PACA), by failing to make full payment promptly for produce. The Judicial Officer denied Respondent's petition to reopen the hearing. The Judicial Officer rejected Respondent's contention that the investigation conducted by the United States Department of Agriculture, Agricultural Marketing Service, to determine whether Respondent violated the PACA, was deficient. As Respondent no longer had a PACA license, the Judicial Officer ordered the publication of the facts and circumstances set forth in the Decision and Order.

In *In re David Tracy Bradshaw*, HPA Docket No. 99-0008, decided by the Judicial Officer on August 3, 2000, the Judicial Officer denied Respondent's Petition for Reconsideration. The Judicial Officer stated that petitions for reconsideration filed pursuant to 7 C.F.R. § 1.146(a)(3) relate to reconsideration of the Judicial Officer's decision only–not to reconsideration of an administrative law judge's initial decision. Therefore, the Judicial Officer treated Respondent's contentions that the Chief Administrative Law Judge and the Judicial Officer erred as contentions that the Judicial Officer erred in the Judicial Officer's June 14, 2000, Decision and Order. The Judicial Officer found that the six issues raised by Respondent in his Petition for Reconsideration had been raised in Respondent's appeal petition and addressed in *In re David Tracy Bradshaw*, 59 Agric. Dec. ___ (June 14, 2000). The Judicial Officer stated that he carefully reviewed the June 14, 2000, Decision and Order and found no error.

In *In re Carl Dean Clark, Jr.* (Decision as to Marie Joyce Coleman), HPA Docket No. 98-0013, decided by the Judicial Officer on August 9, 2000, the Judicial Officer affirmed the Decision by Judge Baker (ALJ), except with respect to the assessment of a $2,000 civil penalty. The Judicial Officer concluded that the Respondent waived her right to an oral hearing and admitted the material allegations of fact in the Complaint based on her failure to appear at the scheduled hearing after having been duly notified of the hearing (7 C.F.R. § 1.141(e)(1)). The Judicial Officer concluded that the Respondent allowed the showing or exhibiting in a horse show of a horse which was sore, in violation of 15 U.S.C. § 1824(2)(D). The Judicial Officer rejected Respondent's argument that she could not have violated 15 U.S.C. § 1824(2)(D) because she did not sore the horse in question and did not know that the horse in question had been sored. The Judicial Officer found that the Respondent proved her inability to pay the $2,000 civil penalty assessed by the ALJ and reduced the civil penalty to $1. In addition to the civil penalty, the Judicial Officer disqualified the Respondent for 1 year from showing, exhibiting, or entering any horse or participating in any horse show, horse exhibition, horse sale, or horse auction.

In *In re Curtis G. Foley*, AWA Docket No. 98-0018, decided by the Judicial Officer on August 16, 2000, the Judicial Officer affirmed, with minor modifications, the Default Decision issued by Administrative Law Judge Edwin S. Bernstein (ALJ) assessing Respondents, jointly and severally, a civil penalty and revoking Respondents' Animal Welfare Act license. The Respondents' failure to file a timely answer to the Amended Complaint is deemed an admission of the allegations in the Amended Complaint (7 C.F.R. § 1.136(c)) and a waiver of hearing (7 C.F.R. § 1.139). However, the Judicial Officer found that, as a matter of law, the Respondents did not violate 9 C.F.R. § 3.127(d) because it was not effective on the date the Respondents were alleged to have violated it. Based on the Judicial Officer's conclusion that the Respondents did not violate 9 C.F.R. § 3.127(d), the Judicial Officer reduced the civil penalty assessed by the ALJ from $7,500 to $6,667.

In *In re Calzado Leon*, P.Q. Docket No. 99-0037, decided by the Judicial Officer on August 29, 2000, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ) concluding the Respondent moved five boxes of Mexican Hass avocados from Chicago, Illinois, to Nashville, Tennessee, in violation of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff and assessing the Respondent a $500 civil penalty for the violations. The Judicial Officer held the Respondent's lack of understanding of the risk of the spread of plant pests associated with the movement of Mexican Hass avocados from Chicago, Illinois, to Nashville, Tennessee, and the Respondent's lack of intent to spread plant pests are not defenses to the Respondent's violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff. The Judicial Officer also held the Respondent was constructively notified of the prohibition on the movement of Mexican Hass avocados to Tennessee by the publication of the prohibition in the *Federal Register*.

In *In re Reginald Dwight Parr*, AWA Docket No. 99-0022, decided by the Judicial Officer on August 30, 2000, the Judicial Officer affirmed the Decision by Administrative Law Judge Edwin S. Bernstein (ALJ), except the Judicial Officer reduced the sanction imposed on the

Respondent by the ALJ. The Judicial Officer found the Respondent: (1) failed to maintain at the Respondent's facility records of acquisition, disposition, and identification of animals in violation of 7 U.S.C. § 2140 and 9 C.F.R. § 2.75(b)(1); (2) failed to maintain at the Respondent's facility a written program of veterinary care in violation of 9 C.F.R. § 2.40; (3) failed to provide animals with adequate shelter from inclement weather in violation of 9 C.F.R. § 3.127(b); (4) failed to provide animals with housing that was structurally sound and maintained in good repair in violation of 9 C.F.R. § 3.125(a); and (5) failed to utilize a sufficient number of employees to maintain the professionally acceptable level of husbandry practices set forth in 9 C.F.R. § 3.125 in violation of 9 C.F.R. § 3.132. The Judicial Officer rejected the Respondent's contention that he did not violate 9 C.F.R. §§ 2.40 and 2.75(b)(1) because he maintained the required records at his residence. The Judicial Officer held that the records required by 9 C.F.R. §§ 2.40 and 2.75(b)(1) must be maintained at an exhibitor's facility where they are readily available to Animal and Plant Health Inspection Service officials during inspections of the exhibitor's facility. The Judicial Officer held that, while 9 C.F.R. § 3.125(a) does not require the Respondent to have a perimeter fence, it does require an adequate safeguard to contain the Respondent's animals and that Respondent failed to maintain an adequate safeguard to contain the Respondent's animals. The Judicial Officer rejected the Respondent's contention that the ALJ failed to consider the whole record. The Judicial Officer rejected the Respondent's contention that his correction of a violation negates the willfulness of the violation and negates the violation. The Judicial Officer held a correction of a violation does not eliminate the fact that a violation has occurred and does not negate the willfulness of the violation. The Judicial Officer considered all the factors that must be considered when determining the amount of the civil penalty to be assessed (7 U.S.C. § 2149(b)) and assessed the Respondent a $7,050 civil penalty and suspended the Respondent's Animal Welfare Act license for 3 years and 6 months.

In *In re Mangos Plus, Inc.*, PACA Docket No. D-98-0025, decided by the Judicial Officer on September 7, 2000, the Judicial Officer denied Respondent's Petition for Reconsideration. The Judicial Officer rejected Respondent's contention that the Chief ALJ made a finding that the United States Department of Agriculture, Agricultural Marketing Service, investigation was credible and reliable. The Judicial Officer stated that the Chief ALJ did not find the investigation was credible and reliable, but, instead, found that the investigator's testimony was reliable and sufficient to establish Complainant's *prima facie* case that during the period March 1996 through July 1998, Respondent failed to make full payment promptly to 30 sellers of the agreed purchase prices in the total amount of $922,742.43 for 306 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate commerce, and that, at the time of the November 4, 1999, hearing, approximately $228,000 of the $922,742.43 debt was still outstanding. The Judicial Officer also rejected Respondent's contention that the June 15, 2000, Decision and Order was erroneously based on unreliable testimony and Respondent's failure to rebut unreliable testimony.

In *In re Jeanne and Steve Charter*, BPRA Docket No. 98-0002, decided by the Judicial Officer on September 22, 2000, the Judicial Officer affirmed Judge Baker's (ALJ) decision that the Respondents violated the Beef Promotion and Research Order (7 C.F.R. §§ 1260.101-.217) and the Rules and Regulations (7 C.F.R. §§ 1260.301-.316) by failing to remit assessments to a

brand inspector or a qualified state beef council for 250 cattle and by failing to pay late-payment charges for the assessments the Respondents failed to remit when due. The Judicial Officer rejected the Respondents' contention that *United Foods, Inc. v. United States*, 197 F.3d 221 (6th Cir. 1999), was controlling. The Judicial Officer found that the ALJ properly relied on *Goetz v. Glickman*, 149 F.3d 1131 (10th Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999), and *United States v. Frame*, 885 F.2d 1119 (3d Cir. 1989), and the Judicial Officer found that *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), was controlling. The Judicial Officer also found that the ALJ's denial of the Respondents' motion to take official notice of the unregulated nature of the beef market, the cattle industry, and the cattle market, was proper. The Judicial Officer found that the Respondents' disagreements with the administration of the beef promotion program and the activities of the National Cattlemen's Beef Association are not defenses to the Respondents' violations of 7 C.F.R. §§ 1260.172, .175, .311, and .312 and are not mitigating circumstances to be taken into account when considering the sanction to impose on the Respondents for their violations. The Judicial Officer rejected the Respondents' contention that the National Cattlemen's Beef Association and the Cattlemen's Beef Promotion and Research Board are a single entity and that the National Cattlemen's Beef Association is an agency of the federal government. The Judicial Officer found that the ALJ's assessment of a $12,000 civil penalty against the Respondents was warranted in law and justified in fact.